

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF GEORGIA

SAVANNAH DIVISION

2017 JUL 27 PM 4:25

TRB

STEVEN LEONARD HUNT,

Plaintiff,

v.

CYNTHIA GROOVER, *et al.*,

Defendants.

CV417-100

REPORT AND RECOMMENDATION

On July 20, 2017, the Georgia Court of Appeals granted Steven Leonard Hunt leave to appeal from his aggravated assault conviction. *State v. Hunt*, No. CR151688 (Chatham Cty. Super. Ct. Oct. 7, 2015) (docket attached); *Hunt v. State*, No. A17D0550 (July 20, 2017) (copy attached). Prior to that, he filed the instant 42 U.S.C. § 1983 case to complain about two state court clerks who allegedly forged the *Hunt* indictment and impeded his direct appeal to further his “illegal arrest.” CV417-100, docs. 1 & 6 (original and amended Complaint); *see also* doc. 1 at 17 (insisting that he’s now “forced to defend [him]self against charges never found by the Grand Jury.”). Hunt seeks \$1,000,000 from those

clerks for “conspiring to conceal the [fact that] plaintiff has never been indicted and concealing dockets needed for appeal.” *Id.*

Hunt also has sought records from the Savannah, Georgia police on that score, but they have stonewalled him -- all part of a plan, he says, to conceal the fact that a detective never appeared before the Grand Jury that indicted him (this, in turn, also invalidates his indictment). Doc. 6 at 7. He wants another \$1,000,000 from that department for denying his Georgia Open Records Act Request, O.C.G.A. § 50-14-1(b)(1) (“ORA”). *Id.*

Upon preliminary review,¹ Hunt’s Complaint fails. “[A] prisoner in state custody cannot use a § 1983 action to challenge ‘the fact or duration of his confinement.’” *Wilkinson v. Dotson*, 544 U.S. 74, 77 (2005) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973)). While Hunt does not explicitly seek relief from his state court conviction -- only money damages -- his conviction’s validity will be implicated if he prevails on his indictment claims. He thus would impermissibly exploit

¹ Hunt is an inmate proceeding *pro se* and *in forma pauperis* (docs. 2-5), so the Court is screening his case under 28 U.S.C. § 1915(e)(2)(B)(ii) to determine whether he has stated a plausible claim for relief. *See also* 28 U.S.C. § 1915A (courts must identify “cognizable claims” filed by prisoners or other detainees and dismiss claims which are frivolous, malicious, fail to state a claim for relief, or seek monetary relief from a defendant immune from such relief).

§ 1983 to end-run habeas corpus exhaustion requirements. As the Supreme Court has said: “[I]n order to recover damages for allegedly unconstitutional conviction or imprisonment . . . a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus, 28 U.S.C. § 2254.” *Heck v. Humphry*, 512 U.S. 477, 486-87 (1994).

Hence, this Court must inquire “whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his [confinement].” *Heck*, 512 U.S. at 487; *see also Edwards v. Balisok*, 520 U.S. 641, 645-46 (1997) (extending *Heck* to prisoner’s claims for declaratory relief, injunctive relief, and damages resulting from alleged unlawful loss of prison good time). Consequently, “the court must look both to the claims raised under § 1983 and to the specific offenses for which the § 1983 claimant was convicted.” *Hughes v. Lott*, 350 F.3d 1157, 1161 n. 2 (11th Cir. 2003) (citing *Heck*, 512 U.S. at 487 n. 6)).

Hunt does not allege that his aggravated assault conviction has been vacated. Indeed, the Court has independently located the above-

cited, active appeal -- he is still challenging it. And it's obvious that if he proved his indictment was fraudulently obtained, it would invalidate his conviction -- even if he now seeks only money damages in doing so. Accordingly, Hunt's "sole federal remedy is a writ of habeas corpus." *Preiser*, 411 U.S. at 500.

All habeas petitioners, for that matter, must first exhaust state court remedies. *Wilkinson*, 544 U.S. at 79 ("[H]abeas corpus actions require a petitioner fully to exhaust state remedies, which § 1983 does not."); *Fain v. Duff*, 488 F.2d 218, 223 (5th Cir. 1973) (exhaustion requirement codified in § 2254(b) applies to all habeas corpus actions, including § 2241 petitions); *Thomas v. Crosby*, 372 F.3d 782, 786 (11th Cir. 2004) (Tjoflat, J., concurring). If Hunt wishes to proceed via habeas corpus, he must submit a separate petition in compliance with the applicable rules. Any such petition, however, would be subject to immediate dismissal for failure to exhaust available state remedies.

Hunt raises his ORA claim against the local police department, but that's not an entity capable of being sued. *Smith v. Savannah Metro Police Dep't.*, 2016 WL 4492821 at *3 (S.D. Ga. Aug. 25, 2016); *Johnson v. Savannah Chatham Metropolitan Police Dept.*, 2010 WL 4790911 at * 2

(S.D. Ga. Oct. 19, 2010) (citing *Dean v. Barber*, 951 F.2d 1210, 1214 (11th Cir. 1992)). Even if he identified a viable defendant, it's still a state law claim for which he pleads no diversity of citizenship between the parties, thus leaving federal question jurisdiction (triggered by his § 1983 claim) as his jurisdictional peg, 28 U.S.C. § 1331. See *Peterson v. Ramirez*, 428 F. App'x 908, 909 (11th Cir. 2011). Supplemental jurisdiction per 28 U.S.C. § 1367 could be invoked to reach it, but Hunt's § 1983 claim is barred. Judicial discretion would thus be best exercised by dismissing the ORA claim so Hunt can pursue it in State court. See *Flemming v. Morris*, 2008 WL 2442184 at * 5 (M.D. Ga. June 13, 2008).

Hunt's Complaint must be **DISMISSED WITH PREJUDICE**, with no re-pleading option warranted. *Dysart v. BankTrust*, 516 F. App'x 861, 865 (11th Cir.2013) (“[D]istrict court did not err in denying Dysart’s request to amend her complaint because an amendment would have been futile.”); *Langlois v. Traveler's Ins. Co.*, 401 F. App'x 425, 426-27 (11th Cir. 2010); *Simmons v. Edmondson*, 225 F. App'x 787, 788-89 (11th Cir. 2007) (district court did not err in dismissing complaint with prejudice without first giving plaintiff leave to amend because no

amendment could have overcome the defendants' immunity). This case should also be recorded as a "strike" under 28 U.S.C. § 1915(g).

Meanwhile, it is time for Hunt to pay his filing fee. His furnished account information shows that he has had \$800 in his jail account during the past six months. Doc. 4. He therefore owes a \$160 partial filing fee. *See* 28 U.S.C. § 1915(b) (1) (requiring an initial fee assessment "when funds exist," under a specific 20 percent formula). His custodian (or designee) therefore shall set aside 20 percent of all future deposits to his account, then forward those funds to the Clerk each time the set aside amount reaches \$10.00, until the balance of the Court's \$350.00 filing fee has been paid in full.

Also, the Clerk is **DIRECTED** to send this Report and Recommendation (R&R) to plaintiff's account custodian immediately, as this payment directive is nondispositive within the meaning of Fed. R. Civ. P. 72(a), so no Rule 72(b) adoption is required. In the event plaintiff is transferred to another institution, his present custodian shall forward a copy of this Order and all financial information concerning payment of the filing fee and costs in this case to plaintiff's new custodian. The

balance due from the plaintiff shall be collected by the custodian at his next institution in accordance with the terms of this Order.

This R&R is submitted to the district judge assigned to this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 72.3. Within 14 days of service, any party may file written objections to this R&R with the Court and serve a copy on all parties. The document should be captioned "Objections to Magistrate Judge's Report and Recommendations." Any request for additional time to file objections should be filed with the Clerk for consideration by the assigned district judge.

After the objections period has ended, the Clerk shall submit this R&R together with any objections to the assigned district judge. The district judge will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to timely file objections will result in the waiver of rights on appeal. 11th Cir. R. 3-1; *see Symonett v. V.A. Leasing Corp.*, 648 F. App'x 787, 790 (11th Cir. 2016); *Mitchell v. United States*, 612 F. App'x 542, 545 (11th Cir. 2015).

SO REPORTED AND RECOMMENDED, this 27th day of July,
2017.



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

Court of Appeals of the State of Georgia

ATLANTA, July 20, 2017

The Court of Appeals hereby passes the following order

A17D0550. STEVEN LEONARD HUNT v. THE STATE .

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby GRANTED. The Appellant may file a Notice of Appeal within 10 days of the date of this order. The Clerk of Superior Court is directed to include a copy of this order in the record transmitted to the Court of Appeals.

LC NUMBERS:

CR150129 CR151688



Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, July 20, 2017.

*I certify that the above is a true extract from the minutes
of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court hereto
affixed the day and year last above written.*

Stephen E. Castles, Clerk.



CHATHAM COUNTY, GA

Eastern Judicial Circuit of Georgia

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July 24, 2017

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State
VS.
HUNT, STEVEN LEONARD

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Case Information

Court: Superior
Case Number: CR151688
Case Type: AGGRAVATED ASSAULT
Judge: HONORABLE JAMES BASS
Assistant District Attorney: EMILY PUHALA
Date Filed: 7/29/2015
Status: CLOSED - JURY GUILTY
Disposition Date: 10/7/2015
Disposition: JURY GUILTY

Defendant Information

Name: HUNT, STEVEN LEONARD
DIN: X0037842
Gender: MALE
Race: WHITE
Height: 71
Weight: 180
Eyes: HAZEL
Hair: BROWN

Attorney Information

N/A

Bondsman Information

N/A

Case Events

Date	Time	Code	Judge	Action
8/22/2017	09:30AM	MOTION HEARING (MTH)	JAMES BASS	CANCELLED EVENT - CL
10/19/2016 10:48:59 AM	10:48AM	TRANSCRIPT RECEIVED		
9/9/2016 10:50:42 AM	10:50AM	TRANSCRIPT RECEIVED		
8/22/2016	3:00PM	MOTION HEARING (MTH)	JAMES BASS	CANCELLED EVENT - CL
6/7/2016 9:52:50 AM	09:52AM	TRANSCRIPT RECEIVED		
5/17/2016	1:30PM	MOTION HEARING (MTH)	JAMES BASS	
5/17/2016	11:00AM	MOTION HEARING (MTH)	JAMES BASS	RESCHEDULE EVENT
5/16/2016	3:00PM	MOTION HEARING (MTH)	JAMES BASS	CONTINUED
4/22/2016 2:12:05 PM	2:12PM	TRANSCRIPT RECEIVED		
4/22/2016 10:16:10 AM	10:16AM	TRANSCRIPT RECEIVED		
2/29/2016	3:00PM	MOTION HEARING (MTH)	JAMES BASS	RESCHEDULE EVENT
1/11/2016	3:00PM	MOTION HEARING (MTH)	JAMES BASS	RESCHEDULE EVENT
12/8/2015 1:37:47 PM	1:37PM	TRANSCRIPT RECEIVED		
12/3/2015 2:23:54 PM	2:23PM	TRANSCRIPT RECEIVED		
11/9/2015 4:00:52 PM	4:00PM	TRANSCRIPT RECEIVED		
9/30/2015	11:00AM	JURY TRIAL	JAMES BASS	
9/28/2015	3:15PM	MOTION HEARING (MTH)	JAMES BASS	
9/28/2015	10:30AM	JURY TRIAL	JAMES BASS	
9/17/2015	11:00AM	ARRAIGN/TRIAL DOCKET CALL	JAMES BASS	
8/17/2015	10:30AM	JURY TRIAL	JAMES BASS	RESCHEDULE EVENT
8/13/2015	3:00PM	MOTION HEARING (MTH)	JAMES BASS	
8/6/2015	11:00AM	ARRAIGN/TRIAL DOCKET CALL	JAMES BASS	

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Charges

Charge	Description	Counts	Severity	Charge Date	Disposition
(FVA)16-5-21	(Family Violence Act) Aggravated Assault	1	FELONY	1/22/2015	Not Guilty 10/2/2015
(FVA)16-5-21	(Family Violence Act) Aggravated Assault	1	FELONY	1/22/2015	Guilty 10/2/2015
Sentencing Details: Description		Fine		Duration	
CONCURRENT TO COUNT 1		\$0.00		20 Years-PRISON	
16-5-41	FALSE IMPRISONMENT	1	FELONY	1/22/2015	Not Guilty 10/2/2015
16-10-93	INFLUENCING WITNESSES	1	FELONY	7/29/2015	Guilty 10/2/2015
Sentencing Details: Description		Fine		Duration	
CONCURRENT TO COUNT 1		\$0.00		5 Years-PRISON	
(FVA)16-5-20	(Family Violence Act) SIMPLE ASSAULT	1	MISDEMEANOR	7/29/2015	Guilty 10/2/2015
Sentencing Details: Description		Fine		Duration	
CONCURRENT TO COUNT 1		\$0.00		12 Months-PRISON	
(FVA)16-5-23.1	(Family Violence Act) BATTERY	1	MISDEMEANOR	7/29/2015	Not Guilty 10/2/2015
16-8-2	THEFT BY TAKING	1	FELONY	7/29/2015	Guilty 10/2/2015
Sentencing Details: Description		Fine		Duration	
CONSECUTIVE TO COUNT 1		\$0.00		5 Years-PRISON	
16-10-93	INFLUENCING WITNESSES	1	FELONY	7/29/2015	Guilty 10/2/2015
Sentencing Details: Description		Fine		Duration	
CONSECUTIVE TO COUNT 1		\$0.00		5 Years-PRISON	
(FVA)16-5-21	(Family Violence Act) Aggravated Assault	1	FELONY	1/22/2015	Guilty 10/2/2015
Sentencing Details: Description		Fine		Duration	
		\$0.00		20 Years-PRISON	

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8/22/2017	09:30AM	MOTION HEARING (MTH)	CANCELLED EVENT - CL	JAMES BASS	
7/18/2017		PRO SE LETTER RECEIVED			
7/11/2017		PRO SE LETTER RECEIVED			
6/8/2017		ORDER			THE COURT NO LONGER HAS JURISDICTION TO RULE ON DEF'S MTNS/DECLINES TO RULE ON DEF'S PRO SE MTNS/
5/19/2017		PRO SE MOTION		JAMES BASS	MTN FOR CONTINUANCE/
5/10/2017		APPEAL INDEX			
5/5/2017		ENTRY OF APPEARANCE			FILED BY ADA PUHALA/
5/3/2017		PRO SE MOTION			MTN FOR FULL AND FAIR REVIEW OF COURT ERROR/
5/1/2017		ORDER			GRANTING PLAINTIFF'S REQUEST TO PROCEED IN FORMA PAUPERIS TO THE APPELLATE LEVEL/
4/20/2017		PRO SE MOTION			NOTICE OF APPEAL/
4/6/2017		ORDER			DEF'S MTN FOR OUT OF TIME APPEAL - GRANTED/
3/27/2017		PRO SE MOTION	GRANTED	JAMES BASS	MTN TO DOCKET AND HEAR APPELLANTS CASE/
2/24/2017		PRO SE LETTER RECEIVED			
1/24/2017		ORDER			ON DEFENDANT'S PRO SE MOTION - DENIED/
1/9/2017		PRO SE MOTION	DENIED		MOTION FOR COURT TO RULE ON MOTION FOR CD'S ENTERED AT TRIAL TO BE TRANSCRIBED AND COMPEL CLERK OF SUPERIOR COURT TO LIST DEFENDANT'S NOTICE OF APPEAL AND FORWARD HIS CASE TO THE COURT OF APPEALS OF GEORGIA/
12/14/2016		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
12/12/2016		PRO SE LETTER RECEIVED			

12/6/2016		DEFENDANTS REQUEST			
11/28/2016		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
11/21/2016		PRO SE LETTER RECEIVED			COURT REPORTERS RESPONSE
11/21/2016		PRO SE LETTER RECEIVED			COURT REPORTERS RESPONSE
11/18/2016		PRO SE MOTION			
11/8/2016		ORDER			ORDER ON DEFENDANTS PROSE MOTIONS/
10/19/2016 10:48:59 AM	10:48AM	TRANSCRIPT RECEIVED			10-17-16 LETTER FROM DEF TO COURT REPORTER; 10-19-16 LETTER FROM COURT REPORTER TO DEF
10/19/2016		ORDER			MOTON FOR OUT OF TIME APPEAL-GRANTED/
10/13/2016		PRO SE MOTION	GRANTED		MOTION FOR COURT TO GRANT A OUT OF TIME APPEAL-GRANTED/MOTION TO SET ASIDE JUDGMENT ON MOTION FOR NEW TRIAL/
10/4/2016		NOTICE OF APPEAL		JAMES BASS	FILE PRO SE/
10/3/2016		PRO SE MOTION	DENIED		MTN FOR DEF ENTIRE GRAND JURY PANEL TO RECONVENE INCLUDING FOREPERSON/
9/9/2016 10:50:42 AM	10:50AM	TRANSCRIPT RECEIVED			01-11-16 MOTION HEARING, JUDGE BASS PRESIDING
8/22/2016	3:00PM	MOTION HEARING (MTH)	CANCELLED EVENT - CL	JAMES BASS	
8/12/2016		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
8/12/2016		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
7/13/2016		ORDER			ORDER ON DEFENDANTS MOTION FOR NEW TRIAL-DENIED/
7/7/2016		MOTION - PRO SE MOTION	DENIED		MOTION FOR HEARING TO HAVE ADAM BRIMMER AND MARILYN SOLANA APPEAR BEFORE THE COURT/MOTION TO HAVE ENTIRE TRANSCRIPT RETRANSCRIBED BY SOMEONE OUTSIDE THE CHATHAM COUNTY COURTHOUSE/
6/7/2016 9:52:50 AM	09:52AM	TRANSCRIPT RECEIVED			05/16-17/16 MOTION HEARING, JUDGE BASS PRESIDING
5/17/2016	1:30PM	MOTION HEARING (MTH)		JAMES BASS	
5/17/2016	11:00AM	MOTION HEARING (MTH)	RESCHEDULE EVENT	JAMES BASS	
5/16/2016	3:00PM	MOTION HEARING (MTH)	CONTINUED	JAMES BASS	
5/4/2016		MOTION/ORDER FOR PRODUCTION OF STATE PRISONER			
5/3/2016		STATES RESPONSE TO DEFENDANTS MOTION FOR NEW TRIAL			AND BRIEF/
4/22/2016 2:12:05 PM	2:12PM	TRANSCRIPT RECEIVED			09/30-10/03-2015 JURY TRIAL MASTER INDEX, JUDGE BASS PRESIDING
4/22/2016 10:16:10 AM	10:16AM	TRANSCRIPT RECEIVED			09-30-15 - 10-03-15 JURY TRIAL, VOLUME 2, JUDGE BASS PRESIDING
3/18/2016		CERTIFIED MAIL RECEIPT			
3/8/2016		RESPONSE FROM OFFICE OF CLERK			

		OF SUP CT			
3/3/2016		NOTICE OF APPEAL			
2/29/2016	3:00PM	MOTION HEARING (MTH)	RESCHEDULE EVENT	JAMES BASS	
2/25/2016		ORDER			ORDER ON STATES MOTION FOR CONTINUANCE-GRANTED/
2/22/2016		MOTION - FOR CONTINUANCE	GRANTED		STATES/
2/17/2016		RESPONSE FROM OFFICE OF CLERK OF SUP CT			
1/25/2016		CERTIFICATE OF SERVICE			
1/25/2016		PRO SE LETTER RECEIVED			LETTER FOR ORDER/
1/25/2016		BRIEF			MOTION FOR NEW TRIAL BRIEF STATMENT OF FACTS/
1/25/2016		AMENDED MOTION	DENIED		AMENMENT TO MOTION FOR NEW TRIAL/
1/25/2016		AMENDMENT TO MOTION	DENIED		AMENMENT TO MOTION FOR NEW TRIAL/
1/25/2016		SUBPOENA DUCES TECUM			ADAM VAN BRIMMER/CRYSTAL FITZHUGH/
1/11/2016		DEFENDANTS DISCOVERY DISCLOSURE			PLEADINGS FILED IN OPEN COURT BY DEFENDANT/
1/11/2016	3:00PM	MOTION HEARING (MTH)	RESCHEDULE EVENT	JAMES BASS	
1/7/2016		SUBPOENA			ADAM VAN CRIMMER/CRYSTAL FITZHUGH/
1/7/2016		MOTION - PRO SE MOTION	DENIED		AMENDED MOTION FOR NEW TRIAL/
1/5/2016		AMENDED MOTION	DENIED		AMENDMENT TO MOTION FOR NEW TRIAL/
1/5/2016		MOTION - PRO SE MOTION	DENIED		MOTION TO CORRECT SENTENCING ORDER/
12/23/2015		MOTION - PRO SE MOTION	GRANTED		MOTION REQUESTING DETERMINATION AS TO DEFS REQUEST TO REPRESENT HIMSELF ON APPEAL/
12/17/2015		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
12/17/2015		AMENDED SENTENCE			
12/15/2015		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
12/14/2015		MOTION - TO WITHDRAW ATTY	GRANTED		PROSE MOTION TO REMOVE STEVEN SPARGER FROM CASE IMMEDIATELY/
12/14/2015		NOTICE - OF INTENT			PROSE NOTICE OF INTENT TO APPEAL/
12/8/2015 1:37:47 PM	1:37PM	TRANSCRIPT RECEIVED			09-28-15 MOTION HEARING, JUDGE BASS PRESIDING
12/8/2015		ENTRY OF APPEARANCE			ATTY STEVEN SPARGER/
12/3/2015 2:23:54 PM	2:23PM	TRANSCRIPT RECEIVED			09-30-15 - 10-03-15 JURY TRIAL, VOLUME 1, JUDGE BASS PRESIDING
11/9/2015 4:00:52 PM	4:00PM	TRANSCRIPT RECEIVED			08-13-15 MOTION HEARING, JUDGE BASS PRESIDING
11/2/2015		MOTION - NEW TRIAL	DENIED		PROSE/
10/30/2015		MOTION - NEW TRIAL	DENIED		PROSE/
10/7/2015		CASE DISPOSED	GUILTY	JAMES BASS	CASE DISPOSED GT
10/7/2015		SENTENCE ORDER			

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